

BEFORE THE TRANSPORTATION SERVICES AUTHORITY OF NEVADA

In Re Authority Investigation and)
Proposed Rulemaking to Amend)
NAC Chapter 706.)

Docket No. 04-09007

At a public hearing of the Transportation Services
Authority Held on March 24, 2005.

PRESENT: Chairman Sandra Lee Avants
Commissioner Bruce H. Breslow
Commissioner Kimberly Maxson-Rushton
Deputy Commissioner Dave Kimball

NOTICE OF ADOPTION OF TEMPORARY REGULATION

On this 24th day of March 2005, the Transportation Services Authority hereby adopts the
following Temporary Regulation identified as Docket No. 04-09007, which pertains to Nevada
Administrative Code, Chapter 706:

**TEMPORARY REGULATION OF THE
TRANSPORTATION SERVICES AUTHORITY
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

TSA DOCKET NUMBER 04-09007 (CHARTER BUS)

EXPLANATION – Matter in *italics* is new; matter stricken [stricken] is material to be omitted.

(AUTHORITY: §1, NRS 706.171 and 706.6411; §§2-3, 5, and 7-8, 26, NRS 706.171; § 4 NRS 706.171 and 706.167; §6, NRS 706.171 and 706.321.)

Section 1. NAC 706.032 is hereby amended to read as follows:

NAC 706.032 "Charter order" defined. (NRS 706.171) "Charter order" means a written order prepared by a *fully regulated* motor carrier authorized to provide ~~charter service by bus or~~ charter service by limousine setting out a request from a customer for the services of a carrier."

Section 2. NAC 706.034 is hereby amended to read as follows:

NAC 706.034 1. "Charter service by bus" means the prearranged transportation of persons who have acquired the exclusive use of a bus for a particular ~~itinerary under an hourly rate for a minimum of 1 hour~~ *itinerary, under a single contract, at a fixed charge for the motor vehicle which is consistent with the carrier's filed tariff*, for the duration of the charter ~~order~~.

2. Except as otherwise provided in paragraph (d) of subsection 3, the term includes services sold to a broker at an hourly rate only, for resale by the broker in combination with other services or facilities not related to transportation at per capita rates or at hourly rates, as necessary.

3. The term does not include:

- (a) Scenic tours;
- (b) Special services;
- (c) Airport transfer services;
- (d) Service which will be resold by the broker for scenic tours or airport transfer services; or
- (e) The carriage of property or cargo not belonging to the group of passengers being transported.

Section 3. NAC 706.1377 is hereby amended to read as follows:

706.1377 1. An application for:

(a) The initial issuance of a certificate of public convenience and necessity to provide intrastate charter service by bus made pursuant to NRS 706.386 to 706.411, inclusive; or

(b) The sale and transfer of an interest in:

- (1) Such a certificate;
 - (2) Fifteen percent or more of the stock of a corporation that holds such a certificate;
 - (3) A partnership that holds such a certificate; or
 - (4) A corporate entity that holds such a certificate which would result in a change in the corporate control of that entity,
- ↪ must, in addition to complying with the provisions of NAC 706.010 to 706.4019, inclusive, that are applicable to pleadings, contain the data set forth in subsection 2.

2. An application described in subsection 1 must contain the following data, either in the application or as exhibits attached thereto:

(a) The type of service proposed, a general description of the service and a reference to the authority pursuant to which the service is to be performed.

(b) The specific authority requested and the statutory provision pursuant to which the certificate is requested.

(c) ~~The terminal and other points to be served, and the number and location of points where equipment will be located.~~

(d) ~~A copy of the charter order that the applicant proposes to use in providing intrastate charter service by bus.~~

—(e) A statement of the rates or fares proposed to be charged and the rules governing the operations of the intrastate charter service by bus pursuant to NRS 706.321 in the form of a tariff prepared pursuant to NAC 706.138 to 706.139, inclusive.

~~(f) (d)~~ The type and number of units of equipment to be used in the proposed service that includes, without limitation, the year, make, model, passenger capacity and, if available, vehicle identification number of each vehicle to be used to provide the intrastate charter service by bus. The application must also include a statement identifying which units of equipment are owned by the applicant, photographs of the equipment to be used and copies of the registration and title of each vehicle already owned by the applicant that will be used under its operating authority.

~~(g)~~ A statement of the qualifications and experience of the personnel who will manage and operate the proposed service, and the proposed operating procedures relating to service, safety, maintenance, the training of drivers, billing, relations with customers and the keeping of records.

~~(h)~~ (e) A statement describing:

(1) The facilities that will be used to provide the proposed service;

~~(2)~~ The address of the domicile of the company and the location where the company maintains its business office and records; and

~~(3)~~ (2) The address and location of the terminal and the equipment to be used by the company.

(i) (f) If the applicant is a corporation or a limited-liability company, a copy of its articles of incorporation or articles of organization, certified by the Secretary of State, and all effective amendments thereto. If the corporation or limited-liability company was incorporated or established in another state, the application must include:

(1) A copy of the certificate issued by the Office of the Secretary of State authorizing the corporation or limited-liability company to transact its business in the State of Nevada; or

(2) Its equivalent, as provided in NRS 80.120.

(j) (g) If the applicant is a partnership, a copy of the partnership agreement and any amendments thereto.

~~(k)~~ (h) If the applicant is not a natural person, a list of all owners, including associated stock certificates, membership certificates or associated documents, along with the percentage of ownership interest of each partner, member or owner. If the applicant is a publicly traded corporation, the requirements of this paragraph may be satisfied by attaching to the application a copy of the Form 10-K or its equivalent filed with the Securities and Exchange Commission showing the controlling ownership, officers and directors of the corporation.

~~(l)~~ (i) If the applicant is operating under a fictitious name, a copy of the certificate filed pursuant to chapter 602 of NRS, if applicable.

~~(m)~~ The name and address of all transportation entities owned or controlled by the applicant, and a copy of the certificates or permits under which each such transportation entity is operating.

~~(n)~~ (j) A copy of the complaint procedures that will be used.

~~(o)~~ A copy of each city and county business license issued to the applicant in this State.

~~(p)~~ (k) Evidence that the applicant can secure the insurance required by NAC 706.191.

~~(q)~~ (l) Additional information as is necessary for a full understanding of the application.

3. If any item required pursuant to this section or by statute is omitted or otherwise deficient after acceptance of the application or filing, the Transportation Services Authority will notify the applicant of the omission or deficiency, in writing, at the address of the applicant listed on the application or filing. If the applicant does not cure the omission or deficiency within 15 working days after the issuance of that notification, the Deputy Commissioner shall, at the next regular meeting of the Transportation Services Authority, move that the application or filing be dismissed.

Section 4. NAC 706.149 is hereby amended to read as follows:

706.149 1. After receiving a certificate or permit, every *fully regulated* common or contract motor carrier shall maintain an investment of not less than 20 percent equity capital in his operations and include proof that he meets this requirement in his annual report filed with the Transportation Services Authority.

2. A *fully regulated* carrier who does not meet the requirement of subsection 1 shall, within 3 months after receiving notice from the Transportation Services Authority of that failure, file a plan proposing the specific steps he will take to meet that requirement within the next 12 months.

3. Within 15 months after receiving notice from the Transportation Services Authority that he does not maintain adequate equity capital, a *fully regulated* carrier must have an investment of not less than 20 percent equity capital in his operations.

4. The certificate or permit of a *fully regulated* motor carrier who does not comply with this section may be revoked by the Transportation Services Authority.

Section 5. NAC 706.152 is hereby amended to read as follows:

706.152 1. The burden of proof lies with the applicant *for any fully regulated operating authority* to satisfy the Transportation Services Authority of its financial ability to perpetuate a continuous service, as applied for, consistent with the public interest. The background of an applicant may be considered by the Transportation Services Authority before granting any privilege. In determining an applicant's financial ability, the Transportation Services Authority may consider:

(a) Equity capital sufficient to acquire the necessary property and equipment, but not less than that required by NAC 706.149;

(b) The reasonableness of rates to be charged;

(c) The applicant's current ratio of assets to liability;

(d) The financial condition of the principals if the applicant is a partnership;

(e) The requirements for capital for the first 12 months of operations;

(f) The reasonableness of any estimates for the operation; and

(g) Any other evidence the Transportation Services Authority deems relevant.

2. The Transportation Services Authority will make an investigation before the issuance of a certificate or permit.

3. An application that does not comply with NAC 706.1375 may be dismissed by the Transportation Services Authority without prejudice on the motion of a party to the proceeding. Such a motion must be in writing and filed before the commencement of any hearing on the application.

Section 6. NAC 706.200 is hereby amended to read as follows:

NAC 706.200 1. Every *fully regulated* common or contract motor carrier shall submit a bill of charges for his services to a customer within 30 days after the rendition of services.

2. A *fully regulated* carrier shall require all accounts to be paid in full within 45 days after the rendition of services unless another period is approved by the Transportation Services Authority in the carrier's tariff.

3. A *fully regulated* carrier shall not submit more than one bill of charges to a customer for the same services without making a reference to the first bill on any subsequent bill.

Section 7. NAC 706.208 is hereby amended to read as follows:

706.208 1. Except as otherwise provided in subsections 2 and 3, and NAC 706.210 and 706.211, an authorized carrier may lease equipment for his own use, with or without a driver, on the basis of a long-term lease. For such a lease:

(a) An authorized *fully regulated* carrier may lease equipment on a one-for-one basis to supplement its fleet up to the entire amount of similar equipment owned and currently operated by the carrier under its operating authority. ~~For the purposes of this paragraph, equipment used by an authorized carrier and equipment used by the authorized carrier to provide intrastate transportation must be used to determine what constitutes similar equipment.~~

(b) Including the vehicles leased by an authorized carrier pursuant to this section, the total number of vehicles operated by the carrier must not exceed, under any circumstances, the total number of vehicles that the carrier is authorized to operate under its certificate or permit.

(c) *The authorized carrier may use his own insurance or that of the lessor to meet the insurance requirements of NAC 706.191.*

(d) *The authorized carrier must ensure that all leased vehicles meet the vehicle safety requirements set forth in NAC 706.397 and 49 CFR 396.*

(e) *The authorized carrier must have a copy of the lease, proof of insurance and vehicle safety reports on file at his office upon commencement of the lease.*

~~2. Except as otherwise provided in subsections 3 and 7, an authorized carrier may lease for his own use, with or without a driver, on the basis of a short-term lease:~~

~~—(a) A bus from an authorized carrier, on an hourly basis, for not more than 48 hours.~~

~~—(b) Any any other equipment from an authorized carrier.~~

Except as otherwise provided in subsection 3 and NAC 706.210 and 706.211, an authorized carrier who leases equipment for his own use, with or without a driver, on the basis of a short-term lease:

(a) May use his own insurance or that of the lessor to meet the insurance requirements of NAC 706.191.

(b) Must ensure that all leased vehicles meet the vehicle safety requirements set forth in NAC 706.397 and 49 CFR 396.

(c) Must have a copy of the lease, proof of insurance and vehicle safety reports on file at his office upon commencement of the lease.

3. The Transportation Services Authority may approve the lease of equipment that does not comply with subsection 1 or 2 if:

(a) The authorized carrier files a petition for a waiver of the requirement with which the lease does not comply; and

(b) The Transportation Services Authority finds that approval of the lease would be in the public interest.

→ The Transportation Services Authority will issue a public notice of the receipt of a petition for a waiver received pursuant to this subsection.

~~4. An authorized carrier who operates a bus pursuant to a short-term lease entered into in accordance with this section:~~

~~—(a) May use his own insurance or that of the lessor to meet the insurance requirements of NAC 706.191.~~

~~—(b) Must have a copy of the lease on file at his office upon commencement of the lease.~~

~~5. 4. Leased equipment may only be used in an operation authorized by the lessee's certificate or permit and must be identified as operated by the lessee. Except as otherwise provided in this subsection, a copy of the lease must be carried with the equipment during the period of the lease. A copy of the short-term lease for a bus entered into pursuant to this section need not be carried in the bus during the period of the short-term lease.~~

~~6. 5. Work may not be performed pursuant to an expired lease.~~

~~7. 6. An authorized carrier may lease restored theme or antique vehicles without complying with the requirements of subsection 2 if the Transportation Services Authority approves the lease before its commencement. The Transportation Services Authority will approve the lease if:~~

~~(a) The leased vehicle is used only for special occasions; and~~

~~(b) Arrangements to lease the vehicle are made at least 7 days before the commencement of the lease.~~

~~8. 7. Every lease of equipment by an authorized carrier must be in writing, dated and signed by the parties thereto or an authorized agent or employee of the parties.~~

~~9. 8. The leased equipment must be under the control and direction of the authorized carrier.~~

~~10. 9. The leased equipment must be operated within the scope of the operating authority of the authorized carrier and in conformance with the tariff of the authorized carrier.~~

~~11. 10. The driver of a leased vehicle must be under the complete control and direction of the authorized carrier. The authorized carrier must ensure that all drivers meet and maintain driver qualifications as set forth in and adopted pursuant to NAC 706.247, and must be free to enforce rules regarding working and driving.~~

~~12. 11. The authorized carrier may not avoid liability for any damages arising out of the negligent operation of the equipment through the terms of the lease.~~

~~13. 12. The terms of any lease of equipment pursuant to this section must include, without limitation, a provision that the equipment must be insured in accordance with the provisions of NAC 706.191. A lessee may use his insurance or the lessor's insurance to satisfy the requirements of NAC 706.191. A copy of the insurance used by a lessee to satisfy the requirements of NAC 706.191 must be made available for review by the Transportation Services Authority.~~

~~14. 13. The compensation to be paid for any leased equipment must be fixed at the inception of the lease and may include a specific sum or formula for calculating the compensation for the duration of the lease.~~

~~15. 14. A vehicle leased pursuant to this section must be identified in accordance with NAC 706.170 as operated by the lessee.~~

~~16. 15. For the purposes of this section, equipment leased by an authorized carrier pursuant to a bona fide capital lease, as that term is defined by generally accepted accounting principles, shall be deemed to be equipment that is owned by the authorized carrier. The provisions of this section do not apply to such a lease.~~

Section 8. NAC 706.212 is hereby amended to read as follows:

706.212 1. ~~Common~~ *Fully regulated common* and contract carriers authorized by the Transportation Services Authority shall not rent or lease vehicles to a shipper or consignee, with or without drivers.

2. An authorized *fully regulated* carrier shall not lease or rent to any person its authority to engage in the intrastate transportation of property or passengers. An authorized carrier is responsible for and shall monitor its daily operation.

3. An authorized *fully regulated* carrier shall not authorize any person to sell its transportation services other than:

(a) Its employees; or

(b) A person who manages its business pursuant to an agreement entered into pursuant to NAC 706.250.

Section 9. NAC 706.218 is hereby amended to read as follows:

706.218 1. Every *fully regulated* common or contract motor carrier shall keep an accurate record of the revenues from his operations in this State, operating and other expenses and other required information and include such information in its annual report covering the yearly period fixed by the Transportation Services Authority, unless otherwise provided by law. The Transportation Services Authority will prescribe the character of the information to be embodied in the annual report and furnish a blank form for the report.

2. Every *fully regulated* common or contract motor carrier shall keep and render to the Transportation Services Authority, in the manner, form and detail prescribed by the Transportation Services Authority, uniform and detailed accounts of all business transacted.

3. The accounts of every *fully regulated* common or contract motor carrier must be closed annually on the basis of either a calendar or fiscal year, and the annual report must be filed not later than May 15 for reports based on a calendar year or not later than 135 days after the end of the fiscal year for reports based on a fiscal year.

4. The Transportation Services Authority will request information omitted from reports or not provided for therein, if in its judgment additional information is necessary.

Section 10. NAC 706.228 is hereby amended to read as follows:

706.228 1. A *fully regulated* certificate holder or his employee shall not solicit passengers.

2. A certificate holder or his employee may:

(a) Answer questions posed by a potential passenger if the conversation is initiated by the potential passenger;

(b) Advertise on the side of a vehicle or on permanently located signs;

(c) Provide brochures in permanently mounted racks or stands;

(d) Establish booths in airports, hotels or other locations;

(e) Advertise in the media or through direct mailing;

(f) Conduct any other marketing activity which has been determined not to be solicitation by the Transportation Services Authority; or

(g) When engaged in the business of transferring persons from an airport, greet potential passengers using one of the following phrases:

(1) "May I help you?"

(2) "Good morning."

(3) "Good afternoon."

(4) "Good evening."

3. With the prior approval of the Transportation Services Authority with regard to dates and locations, a driver may hold up a sign that contains the company name, the "CPCN" number, the approved rates and the words "For Hire." Such a sign must be not more than 18 by 24 inches in size.

4. A certificate holder or his employee shall not stand or park a traditional limousine or livery limousine within 50 feet of a designated taxicab stand unless:

(a) The taxicab stand is located at an airport owned by a governmental entity; or

(b) The Chairman or his designee has authorized the certificate holder to stop or park the traditional limousine or livery limousine within 50 feet of the designated taxicab stand.

5. While on duty, a *fully regulated* certificate holder or his employee shall not stand within 50 feet of a designated taxicab stand to solicit transportation services unless:

(a) The taxicab stand is located at an airport owned by a governmental entity; or

(b) The Chairman or his designee has authorized the certificate holder to stop or park within 50 feet of the designated taxicab stand.

6. As used in this section, "solicit" includes, without limitation, inducing or attempting to induce persons by communication or other action to be transported. The term includes, without limitation:

(a) Except as otherwise provided in subsection 2, initiating conversation with potential passengers;

(b) Shouting information;

(c) Waving signs;

(d) Waving arms or hands;

(e) Flashing lights;

(f) Ringing bells;

(g) Blowing horns;

(h) Blocking access to other motor carriers; or

(i) Except as otherwise provided in subsections 2 and 3, any other activity designed to attract passengers,

→ unless the passenger has arranged for the transportation by reservation or the driver is seeking a specific passenger who has requested that the driver's vehicle be dispatched to the location.

Section 11. NAC 706.307 is hereby amended to read as follows:

706.307 A *fully regulated* common motor carrier applying for a change in any schedule, including a schedule of joint rates, or in the regulations affecting any rates or charges, shall certify in the application that a copy of the proposed schedule has been filed and prominently posted in the carrier's office and in any place where payments are made by customers or users.

Section 12. NAC 706.311 is hereby amended to read as follows:

706.311 1. Except as otherwise provided in NRS 706.351, an authorized carrier shall not:

- (a) Charge, demand, collect or receive a greater, lesser or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares or charges applicable to the transportation as specified in its tariffs filed and in effect at the time.
- (b) Refund or remit in any manner or by any device any portion of the rates, fares or charges so specified except upon orders of the courts or Transportation Services Authority, or extend to the shipper or person any privilege or facility in the transportation of passengers or property except as specified in the tariffs.
- (c) Submit a bid to provide services in any form or manner which is not in conformance with the certificate he holds.
- (d) Use any artifice or subterfuge, or billing or accounting practice in lieu of an authorized commission. The fare or rate charged to the passenger or shipper may not be greater than or different from the fare or rate specified in the tariffs in effect at the time because of the authorized commission.

2. ~~An~~ *A fully regulated* authorized carrier may pay a commission or referral fee to a designated agent who arranges for the provision of transportation services by the carrier. Except as otherwise provided in subsection 6, a commission or referral fee authorized pursuant to this subsection must not exceed 10 percent of the rate, fare or charge specified in the carrier's tariffs for the type of service that the designated agent has arranged for the carrier to provide.

3. A designated agent arranging or providing transportation on the vehicles of any certificated motor carrier shall not charge, demand, collect or receive a greater, lesser or different compensation for the transportation of persons or property or any service in connection therewith than the rates, fares or charges specified in the motor carrier's tariffs.

4. All tickets issued by a carrier or its designated agent must identify the charge to the passenger for the service or transportation purchased. That charge may not be different from the tariff on file with the Transportation Services Authority.

5. A carrier that uses or intends to use the services of a designated agent within this State shall keep a complete list of its designated agents which must be made available for review by the staff of the Transportation Services Authority.

6. An authorized carrier that provides scenic tours may pay a commission or referral fee of up to 10 percent to a designated agent who arranges for the provision of scenic tours by the carrier. The commission or referral fee for off-road scenic tours must not exceed 25 percent of the rate, fare or charge specified in the tariffs of the carrier for the scenic tour that the designated agent has arranged for the carrier to provide.

Section 13. NAC 706.353 is hereby amended to read as follows:

706.353 1. Only a common motor carrier authorized to provide ~~charter service by bus or~~ charter service by limousine may provide such service, but no such service may be provided until a charter order is prepared.

2. Except as otherwise provided in subsection 3, a ~~charter service by bus or~~ charter service by limousine may not be operated over the same routes or to the same points so frequently as to constitute a regularly scheduled route or service.

3. A ~~charter service by bus or~~ charter service by limousine may be operated over the same routes or to the same points in the form of a shuttle service.

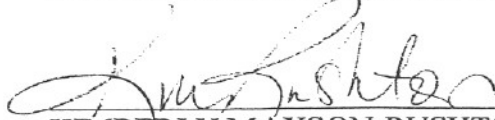
By the Authority,



SANDRA LEE AVANTS, Chairman



BRUCE H. BRESLOW, Commissioner



KIMBERLY MAXSON-RUSHTON, Commissioner

Attest:



DAVE KIMBALL, Deputy Commissioner

Dated:

March 29, 2005

Las Vegas, Nevada